

This letter discusses nexus. See Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992). (This is a GIL.)

June 11, 2007

Dear Xxxxx:

This letter is in response to your letter dated April 9, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On advise [sic] of council due to a recent adverse Nexus ruling in Texas, ABC respectfully requests a Nexus review of the ABC sales process used in your State to help us determine if we have exposure to any current or past uncollected sales tax, penalties or interest issues.

Description of ABC sales process and revenues:

ABC mails fliers to every nurse in your State two to four times a year inviting the nurses to a sales seminar. Seminars are held in larger metropolitan areas throughout the State in local hotels.

ABC sends in several salaried sales people to run the sales seminars. Salaried ABC sales people are usually giving seminars in a State for two to four weeks at a time each seminar cycle.

In the seminars, ABC salaried sales people write up sales contracts for products sold in the seminars, arrange financing for products sold in the seminars, collect down payments for products sold in the seminars which are being financed, and deliver the products sold in the seminars to the end user of our products.

The nurse's [sic] names who did not purchase any ABC products at a company sponsored seminar are turned over to a local ABC commissioned sale person who will follow up and

arrange to meet locally with a nurse and attempt to close the sale at the nurses [sic] home or place of employment.

Almost without exception, all ABC sales transactions are completed at point of sale during a company sponsored in-state sales seminar or an in-home sales transaction.

Since 1992, we have operated under two different company names:

1992—1995 NAME

1995—2007 ABC.

Both companies have operated under the above described method and between them have sold 110,000 customers generating revenues exceeding \$450,000,000.00.

We always assumed we were Nexus compliant in all States since we had never been challenged on any Nexus issues in the past.

We can provide detailed information concerning number of times we mailed into your State, number of days a year we spent in your State, number of dollars generated annually in your State and the name, phone number, and address of all local commissioned salespeople operating in your state on behalf of ABC.

I would appreciate it if you could expedite this matter and get back to me as soon as possible with any inquiry forms you feel you may need from ABC in order to help us get this matter resolved and get into State Nexus compliance

Thank you in advance for your help and consideration in this matter,

DEPARTMENT'S RESPONSE:

Determinations regarding nexus are very fact specific and cannot be addressed in the context of a General Information Letter. The Department has found that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information.

The following guidelines, however, may be useful to you in determining whether your client would be considered "a retailer maintaining a place of business in Illinois" subject to Use Tax collection obligations.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910. The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please see Brown's Furniture, Inc. v. Wagner, 171 Ill.2d 410, (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax liability on the purchase of the goods and have a duty to self-assess and remit their Use Tax liability directly to the State. In such instances, those customers must remit their Illinois Use Tax along with a completed Form ST-44, Illinois Use Tax Return unless they are otherwise registered or are required to be registered with the Department and remit their Illinois Use Tax with a Form ST-1, Illinois Sales and Use Tax Return.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
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TDC:msk